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Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

CARTER'S GROVE, LLC,
Debtor.

Case No.: 11-30554 (TEC)

Chapter 11

**DECLARATION OF HALSEY M. MINOR
IN SUPPORT OF DEBTOR'S OBJECTION
TO MOTION OF COLONIAL
WILLIAMSBURG FOUNDATION
TO TRANSFER VENUE TO THE
EASTERN DISTRICT OF VIRGINIA**

Date: April 1, 2011
Time: 10:00 a.m.
Place: U.S. Bankruptcy Court
234 Pine Street, 19th Floor
San Francisco, California
Judge: Honorable Thomas E. Carlson

HALSEY M. MINOR, declares under penalty of perjury as follows:

I submit this declaration (the "Declaration") in support of the *Debtor's Objection to Motion of Colonial Williamsburg Foundation to Transfer Venue to the Eastern District of Virginia* (the "Objection") filed contemporaneously herewith.¹

Except as otherwise stated, all facts contained within this Declaration are based upon personal knowledge (albeit my own or knowledge that is gathered from my review of relevant

¹ Capitalized terms not defined herein shall have the meanings use in the Objection.

1 documents, or my opinion based upon my experience concerning my business and financial
2 affairs). If called upon to testify, I would testify to the facts set forth in this Declaration.

3 I have been a technology entrepreneur for approximately 20 years. During this time, I have
4 been the head of many successful businesses and other ventures and built many relationships that
5 are not only important to me professionally but also personally. I founded CNET in 1993 and ran
6 CNET for 8 years during which time it became one of the internet's first companies to achieve
7 profitability. I also developed 2 other spin-off companies which independent of CNET became
8 public entities: Vignette Software and Snap/NBCi. I am currently investing in new companies in a
9 broad range of fields through Minor Ventures. For instance the service Google Voice was
10 developed by Minor Ventures and sold to Google. In addition, I co-founded and was the largest
11 financial investor and second largest shareholder in Salesforce.com, one of the most successful
12 technology companies of the decade and a pioneer in "cloud computing."

13 Carter's Grove Plantation ("Carter's Grove") is a historic plantation located on the north
14 shore of the James River in the Grove Community of southeastern James City County in the
15 Virginia Peninsula area of the Hampton Roads region of Virginia. As a passionate historic
16 preservationist, I acquired the Georgian style mansion and 476 acres for \$15.3 million in December
17 2007 with the intent of restoring it consistent with its original design.

18 I initially purchased Carter's Grove through the Halsey McLean Minor Revocable Trust
19 11304 (the "Trust"). I am the trustee and sole beneficiary of the Trust. A true and correct copy of
20 the Trust is annexed to this Declaration as **Exhibit A**. The Trust was initially formed on or around
21 November 3, 2004 in San Francisco, California pursuant to the laws of the state of California. In
22 connection with the purchase of Carter's Grove by the Trust, in my sole capacity as trustee of the
23 Trust, I caused the Trust to assign its interest in Carter's Grove to Carter's Grove, LLC (the
24 "Debtor").

25 I formed the Debtor entity on December 10, 2007 to hold title to Carter's Grove. The
26 Debtor is not a commercial enterprise. It operates no business. The Debtor's ability to pay its
27 obligations is entirely dependent on my personal financial situation and all the decisions regarding
28 the property have always been made by me, from my offices in San Francisco.

I have been a resident of San Francisco since 1994 (with the exception of 18 months during 2002 and 2003). Since 2005, I have conducted all of my various business ventures out of my Minor Venture's office located on 50 Fremont Street, San Francisco, California. These offices were moved to 199 Fremont, San Francisco California in June 2007. In April 2010 I relocated my office to my home in San Francisco, California (which is also an historically significant property that is on the National Historical Registry as is Carter's Grove).

At all times during the negotiation of the purchase of Carter's Grove and to date, I have controlled, directed, and coordinated the preservation, anticipated renovation and maintenance of Carter's Grove from my offices in San Francisco, California. The financial records regarding Carter's Grove are located in San Francisco. All decisions regarding capital expenditures and equity infusions from my home office in San Francisco, California and implemented by employees in San Francisco.

CWF was well aware that it was doing business with me in California. Among other things, the various transaction documents relating to the purchase, sale, lease, and use of Carter's Grove between the Debtor and CWF reflect that I conducted my management duties and operation of Carter's Grove from San Francisco, California.

The Debtor's Articles of Organization, dated December 10, 2007 (the "Articles") reflect that the "address of the principal office where the records will be maintained pursuant to Va. Code § 13.1-1028 is c/o Minor Ventures, 199 Fremont Street, 12th Floor, San Francisco, California 94105. A true and correct copy of the Articles is annexed to this Declaration as **Exhibit B**.

The deed (the "Carter's Grove Deed") pursuant to which CWF transferred its interest in Carter's Grove to the Trust demonstrates that the management of the Debtor would take place in San Francisco, California. A true and correct copy of the Carter's Grove Deed is annexed to this Declaration as **Exhibit C**. The very first paragraph of the Carter's Grove Deed states that

THIS DEED, made this 17th day of December, 2007, by and between **THE COLONIAL WILLIAMSBURG FOUNDATION**, a Virginia non-stock, non-profit corporation (successor in interest to **COLONIAL WILLIAMSBURG, INCORPORATED**), ("Grantor"), and **CARTER'S GROVE, LLC**, a Virginia limited liability company ("Grantee") whose address is c/o Minor Ventures, 199 Fremont Street, 12th Floor, San Francisco, California 94105.

1 Carter's Grove Deed, pg. 1 (emphasis in original).

2 Similarly, the notice address under the following documents all used my San Francisco,
3 California office location: (i) CWF Deed of Trust (annexed hereto as **Exhibit D**), (ii) the Note
4 relating to the Debtor's payment obligations to CWF (annexed hereto as **Exhibit E**), (iii) the Deed
5 of Lease, dated December 17, 2007, between the Debtor and CWF with respect to the Museum
6 (annexed hereto as **Exhibit F**), (iv) the Deed of Lease, dated December 17, 2007, between the
7 Debtor and CWF with respect to the Pasture (annexed hereto as **Exhibit G**), (v) the Archaeological
8 Agreement, dated December 17, 2007, between the Debtor and CWF (annexed hereto as
9 **Exhibit H**), and (vi) the Maintenance Agreement, dated December 17, 2007, between the Debtor
10 and CWF (annexed hereto as **Exhibit I**).

11 While the operating agreement of the Debtor, dated December 12, 2007 (the "Operating
12 Agreement"), designates 1340 Stony Point Road, Charlottesville, Virginia as the Debtor's principal
13 place of business, it should be noted that this was the address used by a person that administered the
14 payment of bills and other ministerial services for Carter's Grove and my other business ventures in
15 Virginia. This individual ceased working for me well over a year prior to the commencement of
16 the Debtor's case. My actual accountants that I used for Carter's Grove and my other business
17 ventures are located in California.

18 In any event, the principal place of business provision in the Operating Agreement does not
19 restrict the Debtor from changing the principal place of business. In fact, section 9.1(a) of the
20 operating agreement provides that the Debtor "may relocate the principle place of business and
21 principal office and have such additional offices as the Manager (myself) may deem advisable. A
22 true and correct copy of the Operating Agreement is annexed to this Declaration as **Exhibit J**.

23 CWF's Press Release regarding the sale of Carter's Grove also reflects that I would oversee
24 the preservation and management of Carter's Grove. A true and correct copy of the Press Release
25 is annexed to this Declaration as **Exhibit K**. In the Press Release, I am described as the purchaser,
26 not the Debtor. In addition, in the Press Release, CWF acknowledges that I will oversee and make
27 the day to day decisions regarding Carter's Grove since it is I that "will protect the property for the
28 long term . . . [and] will be a fine steward of the Carter's Grove."

1 ***Assets***

2 In October 2009, and after the onset of the recession that began in August 2008, I obtained
3 an appraisal (the “Appraisal”) of Carter’s Grove to determine whether any equity financing would
4 be available to me. The relevant pages of the Appraisal are annexed to this Declaration as
5 **Exhibit L.** At the time of the Appraisal, it shows that Carter’s Grove is worth no less than
6 \$21,000,000. It should be noted that the appraisal does not include approximately 76 acres of
7 developable land that owned by the Debtor. Accordingly, I believe that the value of Carter’s Grove
8 is greater than \$21,000,000 and still exceeds by a substantial amount the \$12.5 million in claims
9 asserted against the Debtor.

10 ***First Deed of Trust***

11 The Debtor purchased Carter’s Grove for \$[15.3] million and paid CWF all but \$3.4 million
12 (the last two payments). In December 2007, the Debtor (through myself) executed the Note for the
13 benefit of CWF promising to pay \$10,300,000 in exchange for the purchase of Carter’s Grove. A
14 true and correct copy of the Note is annexed to this Declaration as **Exhibit E**. The Note requires
15 the Debtor to make six (6) installment payments beginning July 15, 2008 each in the approximate
16 amount of \$1.7 million. Each subsequent installment payment was due every six months thereafter
17 until the Note was paid in full. The Debtor’s repayment obligations under the Note are secured by
18 a first priority deed of trust, dated December 17, 2007 (the “CWF Deed of Trust”) and my personal
19 guaranty. The Note also contains a provision providing for the confession of judgment upon
20 default. The Note confession of judgment could have been enforced in Williamsburg, Virginia, but
21 CWF did not take any action to enforce the confession of judgment prior to the commencement of
22 the Debtor’s case.

23 As of the Petition Date, the Debtor had not made the last two installment payments due
24 (July 15, 2010 and January 15, 2011) under the Note. These payments were not made because I
25 have been experiencing severe liquidity problems that have prevented me from making these last
26 two payments. The missed payments were the result of Sotheby’s Inc. (“Sotheby’s”) execution on
27 a judgment obtained in litigation in the Southern District of New York. Currently, I estimate that
28 the claims asserted by CWF under the Note are approximately \$4,000,000. I believe the Debtor

1 may have defenses to these claims or affirmative claims against CWF relating to failure to disclose
2 or potential active concealment of conditions on the property of Carter's Grove. I am investigating
3 these claims and defenses.

4 ***Second Deed of Trust/AVN Air, LLC Guaranty***

5 In my sole capacity as trustee for the Trust, I caused the Trust to enter into a lease, dated
6 May 22, 2005 (the "AVN Lease"), with AVN Air, LLC ("AVN") for a certain aircraft. In or
7 around February 2010, after executing the AVN Lease, AVN and myself restructured the
8 obligations under the AVN Lease by entering into various forbearance and guaranty agreements.
9 AVN was represented in the February 2010 restructuring and continues to be represented by Davis,
10 Wright and Tremaine in San Francisco. To secure the payment obligations under these agreements,
11 I caused the Debtor to guarantee the obligations of AVN in the amount of \$5,000,000 and agreed to
12 execute a second priority deed of trust, dated February 1, 2010 (the "AVN Deed of Trust"), having
13 a limitation of liability of \$5,000,000.

14 ***Third Deed of Trust/Sotheby's Guaranty***

15 Prior to the Petition Date, Sotheby's obtained a judgment against me arising from my
16 purchase of art from Sotheby's. I satisfied the initial judgment through a payment of over \$6
17 million to Sotheby's and appealed that judgment. Thereafter, in November 2010, Sotheby's
18 obtained a judgment for attorneys' fees (the "Fee Judgment"). Sotheby's subsequently executed on
19 the Fee Judgment and obtained a liens and restraining notices against my various art, furniture, and
20 design property (the "Property"). Sotheby's also levied upon my cash and a receivable due to me
21 (approximately \$1.3 million) from the sale of other art. From early November 2010, through the
22 Petition Date, my assets were completely frozen.

23 On or around February 14, 2011, Sotheby's and I entered into a settlement agreement (the
24 "Sotheby's Settlement Agreement") regarding the Fee Judgment and the appeal of the prior
25 judgment. In connection therewith, I agreed to (i) withdraw the appeal, (ii) permit Sotheby's to sell
26 the Property and use the sale proceeds to pay secured tax claims and to satisfy the \$3.4 million Fee
27 Judgment, and (iii) cause the Debtor execute a third priority deed of trust against Carter's Grove
28 (the "Sotheby's Deed of Trust"), to secure my payment of the Fee Judgment. The Property is

1 scheduled for auction by Sotheby's in the Fall. In exchange, I was released and the release of the
2 \$1.3 million created short term liquidity which will enable me to pay my ordinary course personal
3 and business expenses and to restructure my other debts.

4 ***Tax Claims***

5 James City County has a lien against Carter's Grove arising from the Debtor's obligation to
6 pay certain property taxes. The property taxes were assessed on June 5, 2010 and December 6,
7 2010. As of the Petition Date, the Debtor estimates that the James City County is owed
8 approximately \$22,000. The tax claims represent less than 0.25% of the total claims asserted
9 against the Debtor.

10 ***Trade Debt***

11 Of the ten (10) general unsecured creditors listed in the Debtor's schedules of assets and
12 liabilities (the "Schedules"),² seven (7) are utilities, two (2) are insurance related, and one (1)
13 relates to services provided to Carter's Grove. In the aggregate, the trade creditors assert general
14 unsecured claims directly against the Debtor in the approximate amount of \$53,400. The general
15 unsecured claims asserted against the Debtor are *de minimis*. These claims represent approximately
16 less than 0.5% of the total claims asserted against the Debtor. Given the value Carter's Grove, I
17 believe that all creditors, including the *de minimis* trade debt, will be satisfied in full because the
18 Debtor's equity in the property exceeds the value of the secured claims by a substantial amount.

19 ***Summary and Geographic Distribution of Debt***

20 As noted above, there are approximately \$12.4 million in secured claims and \$53,400 in
21 general unsecured claims asserted against the Debtor's estate. The amount outstanding under the
22 CWF Deed of Trust is approximately \$4 million and held by CWF located in Williamsburg,
23 Virginia. The amount of the AVN Deed of Trust is approximately \$5 million and held by AVN
24 who is located in Irvine, California and has counsel located in San Francisco, California. The
25 amount outstanding under the Sotheby's Deed of Trust is approximately \$3.4 million and held by

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27 _____
28 ² Based on further review of the Debtor's records and discussions with the Office of the United States Trustee,
including at the March 22, 2011 section 341 meeting, I intend to cause the Debtor to amend the Schedules. The
amendments do not change the creditor composition.

1 Sotheby's, Inc. who is located in New York, New York. Both Sotheby's and AVN have San
2 Francisco based counsel.

3 The geographic distribution of the asserted secured debt reflects that 40% of such amount is
4 held by creditors in California, 27% in New York (with counsel located in California), and 32% in
5 Virginia. Accordingly, approximately 67% of the claims asserted against the Debtor is held by
6 creditors located in or represented by counsel in California. As noted above, nearly all of the trade
7 or unsecured debt is held by various utility providers and are located in the region near Carter's
8 Grove. However, such unsecured debt represents less than 0.5% of the total debt asserted against
9 the Debtor.

10 ***Restructuring Efforts***

11 The commencement of the Debtor's chapter 11 case was precipitated by my individual
12 liquidity problems. The Debtor does not operate or generate any revenue. As a result, all of the
13 expenses of maintaining and preserving Carter's Grove are funded by me. When my assets were
14 frozen, I could not fund the payments to CWF and CWF initiated foreclosure proceedings. The
15 foreclosure sale was noticed on a very short timetable –approximately two weeks- and this case was
16 filed just prior to the scheduled sale to preserve the substantial equity in Carter's Grove.

17 I have substantial other assets which, while currently illiquid, will be available to satisfy the
18 claims of creditors. I believe this case should move rapidly and given the substantial equity
19 cushion, the restructuring of any remaining secured debt should be consensual. However, absent a
20 consensual restructuring, I intend to very quickly propose a plan that will pay all allowed claims in
21 full.

22 ***Minor Family Hotels, LLC Bankruptcy Case***

23 In September 2010, Minor Family Hotels, LLC ("MFH") commenced a chapter 11 case in
24 the Bankruptcy Court for the Western District of Virginia. Prior to the commencement of MFH's
25 chapter 11 case, MFH commenced actions against the developer of MFH's property and the
26 developer's principal, the bank that committed to certain financing within the Western District of
27 Virginia. Subsequently, the general contractor filed an action against MFH and me, and we filed
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1 counterclaims. While all of these lawsuits were pending in Virginia, MFH's lender commenced an
2 action in Georgia against MFH.

3 With the advice of counsel, I determined that, due to these numerous and protracted
4 litigations, it was appropriate to commence MFH's chapter 11 case in the Western District of
5 Virginia. Unlike the Debtor's case, MFH's case was strongly tied to the development of the assets
6 held by MFH and the financing that was crucial to the development of such assets. After
7 commencing MFH's chapter 11 case, MFH removed these various litigations to the bankruptcy
8 court and attempted to consolidate them. However, the bankruptcy court refused to consolidate the
9 litigations and instead transferred the actions to the Georgia court that was presiding over the case
10 commenced by MFH's lender. The bankruptcy court transferred the removed cases to Georgia
11 even though MFH's assets were located within the Western District of Virginia. Here, by contrast,
12 the Debtor's chapter 11 case was caused by my liquidity problems, and not by problems associated
13 with the assets of the Debtor.

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
15 and correct.

16 Dated: March 23, 2011
17 Los Angeles, California



18 Halsey M. Minor

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